

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

209 CMR 49.00: INSURANCE SALES BY BANKS AND CREDIT UNIONS

Section

- 49.01: Purpose and Scope
- 49.02: Applicability and Relationship to Other State and Federal Law
- 49.03: Definitions
- 49.04: Eligibility to Conduct Insurance Sales Activities
- 49.05: Application Process to Conduct Insurance Sales Activities
- 49.06: Consumer Protection Terms and Conditions
- 49.07: Penalties and Sanctions
- 49.08: Severability

49.01: Purpose and Scope

The purpose of 209 CMR 49.00 *et seq.* is to establish the application and approval procedures for banks and lenders seeking to exercise insurance sales agency powers pursuant to M.G.L. c. 167F § 2A and St. 1998, c. 129, the *Consumer Protection Act Relative to the Sale of Insurance by Banks*, and M.G.L. c. 171, §75B and St. 2002, c. 454, *An Act Relative to Credit Unions*, under licenses issued by the Division pursuant to M. G. L. c. 175, § 209 and 211 CMR 142.00 *et seq.*. Terms and conditions governing the insurance sales activities and practices of banks, federal banks and lenders also are prescribed. The terms and conditions set forth in 209 CMR 49.06 are consumer protections mandated by M.G.L. c. 167F, § 2A(b)(1) through (9) and M.G.L. c. 171, §75B(b)(1) through (9) which ensure that such business is conducted in accordance with the consumer protection laws of the Commonwealth.

49.02: Applicability and Relationship to Other State and Federal Law

(1) General. 209 CMR 49.00 *et seq.* shall apply to banks and lenders as defined under 209 CMR 49.03. Federal banks that engage in insurance sales activities shall be governed by 209 CMR 49.06 which establishes consumer protection terms and conditions applicable to such activities. The Division, however, shall enforce the terms and conditions found within 209 CMR 49.06 with respect to federal banks pursuant to M.G.L. c. 175, § 209, and 211 CMR 142.00 *et seq.*

(2) Insurance Producer Licensing Requirements. Any bank or lender authorized by the Commissioner to engage in insurance sales activity shall obtain a license as an insurance producer from the Division prior to engaging in any such activity. Banks and lenders shall at all times maintain valid insurance producer licenses under M.G.L. c. 175, § 209 and shall conduct such business in full compliance with all applicable rules, regulations and directives of the Division pertaining to licensing and the sale of insurance products.

(3) Federal Conditions Governing the Sale of Insurance. The conditions and limitations and other provisions contained in 209 CMR 49.00 *et seq.*, are in addition to federal conditions governing the sale of insurance products. Banks and lenders shall comply with federal conditions governing the sale of insurance products. The terms and conditions set out in M.G.L. c. 167F § 2A(b)(1) through (9), M.G.L. c. 171, §75B(b)(1) through (9), 209 CMR 49.06, and 211 CMR 142.00 *et seq.*, however, shall control in the case of a conflict with such federal conditions.

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

- (4) Annuity Products. Nothing in 209 CMR 49.00 *et seq.*, shall prohibit a bank or lender from exercising its express or incidental powers to sell annuity products under state or federal law.
- (5) Credit Insurance. 209 CMR 49.00 *et seq.*, shall not apply to credit insurance activities of banks, federal banks or lenders pursuant to M.G.L. c. 167F, § 2(16) and (17), M.G.L. c. 171, §75(7) and (9) or M.G.L. c. 255, § 12G, by virtue of M.G.L. c. 167F § 2A(d) and M.G.L. c. 171, §75B(d).
- (6) SBLI Agent Banks. Banks and federal banks licensed as agents for SBLI pursuant to M.G.L. c. 178A, shall not be subject to 209 CMR 49.00 *et seq.*, only to the extent of the authority issued under such licenses.

49.03: Definitions

As used in 209 CMR 49.00 *et seq.*, the following words shall, unless the context otherwise requires, have the following meanings:

Adequately capitalized. A bank shall be deemed adequately capitalized if the bank meets the definition of an adequately capitalized institution as defined under the prompt corrective action provisions of the Federal Deposit Insurance Act, 12 U.S.C. § 1831(o), the Federal Deposit Insurance Corporation's Capital Adequacy Regulations, 12 CFR § 325.103, the Federal Credit Union Act, 12 U.S.C. §1790d and the regulations promulgated by the NCUA.

Affiliate. An affiliate of a bank as defined by M.G.L. c.167A, § 1, or a credit union service organization as established pursuant to 12 U.S.C. §1786a(e)(1) or by M.G.L. c. 171, §6A and by regulations promulgated thereunder by the Commissioner.

Applicant. A bank or lender seeking approval from the Commissioner to engage in insurance sales activities.

Bank. A bank shall include a state-chartered savings bank, co-operative bank, credit union, or trust company or any other bank charter form hereinafter established under the General Laws. A bank shall also include a Massachusetts branch of an out-of-state bank, as defined by M.G.L. c. 167, § 1, provided, however, that the laws of such bank's chartering State authorize the exercise of such powers. The term bank shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a bank.

Bank premises. A main office or branch office(s) of a bank or federal bank established under state or federal law or any other bank office, including a loan production office, in which consumer deposit or credit transaction may be effected. The term also shall include the offices of lenders. Electronic branches established under M.G. L. c. 167B are not defined as bank premises and are not authorized locations for insurance sales activities.

Commissioner. The Commissioner of Banks, including the Division of Banks, established under M.G.L. c. 26, § 1.

Company. An insurance company licensed pursuant to M.G.L. c. 175.

CRA. The Community Reinvestment Act established under M.G.L. c. 167, §14 or comparable provisions of Federal law.

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

Division. The Division of Insurance, including the Commissioner of Insurance, established under M.G.L. c. 26, § 1.

Federal bank. A bank or credit union chartered by the United States subject to supervision and examination by the Office of the Comptroller of the Currency, the Office of Thrift Supervision or the National Credit Union Administration, or any such successor federal bank regulatory agency. The term federal bank shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a federal bank.

Federal bank regulatory agency. The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration or any other applicable federal bank regulatory agency.

Federal conditions governing the sale of insurance. The conditions established by the Comptroller of the Currency, the National Credit Union Administration and other federal regulatory agencies, by guideline or subsequent regulation, governing the sale of insurance products. The term shall also include conditions prescribed by the federal bank regulatory agencies' *Interagency Statement on Retail Sales of Mutual Funds and other Non-deposit Investment Products*, to the extent applicable.

Insurance sales activities. The marketing, negotiating, soliciting or selling of insurance products in Massachusetts, as those terms are defined in M.G.L. c. 175, §162H.

Interagency Agreement. The *Interagency Agreement Relative to Bank Insurance Sales Consumer Complaint Resolution Procedures* entered into by the Commissioner and the Division pursuant to M.G.L. c. 167F § 2A(b)(9); M.G.L. c. 175 § 210; St. 1998, c. 129, § 11; M.G.L. c. 171, §75B(b)(9) and St. 2002, c. 454, §§1,6.

Lender. A small loan company licensed pursuant to M.G.L. c. 140, § 96; a mortgage lender and a mortgage broker licensed pursuant to M.G.L. c. 255E; and a mortgagee subject to the provisions of M.G.L. c. 183, § 68. The term lender shall also include an affiliate, subsidiary corporation or third party vendor engaged in insurance sales activities on behalf of, or under contract with, a lender.

Office of Consumer Affairs. The Office of Consumer Affairs and Business Regulation established under M.G.L. c. 24A, § 1.

SBLI. The Savings Bank Life Insurance Company of Massachusetts operating pursuant to M.G.L. c. 178A.

St. 1998, c. 129. Chapter 129 of the Acts of 1998, the *Consumer Protection Act Relative to the Sale of Insurance by Banks*.

St. 2002, c. 454: Chapter 454 of the Acts of 2002, *An Act Relative to Credit Unions*.

Troubled condition. A bank shall be deemed to be in troubled condition if it:

- (a) has a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System CAMELS);
- (b) is subject to a cease and desist order, a consent order, or a formal written agreement, unless otherwise informed in writing by the Commissioner or an applicable federal bank regulatory agency; or

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

(c) is informed in writing by the Commissioner or an applicable federal bank regulatory agency that as a result of an examination the bank has been designated in "troubled condition" for purposes of 209 CMR 49.05(1).

49.04: Eligibility to Conduct Insurance Sales Activities

- (1) Financial and Managerial requirements. Any bank or lender engaging in insurance sales activities pursuant to 209 CMR 49.00 *et seq.* must possess the necessary financial and managerial resources to ensure such activity will not adversely affect the institution's safety and soundness.
- (2) Policy and procedure requirements. Any bank or lender engaging in insurance sales activities pursuant to 209 CMR 49.00 *et seq.* must have in place adequate policies and procedures governing the performance of such activity by the institution and its employees, to minimize any credit, market, liquidity, operational, legal, reputational and compliance risks to the bank or lender.
- (3) Satisfactory CRA rating requirement. Any bank seeking to engage in insurance sales activities pursuant to 209 CMR 49.00 *et seq.* must have received at least a satisfactory CRA rating at the most recent examination conducted by the Commissioner or other applicable federal bank regulatory agency at the time authority to engage in such activity is sought.
- (4) Review. Insurance sales activity undertaken by a bank or lender pursuant to 209 CMR 49.00 *et seq.* shall remain subject to periodic review by the Commissioner. The Commissioner may modify, curtail, rescind or otherwise limit the authority of a bank or lender to conduct insurance sales activities pursuant to 209 CMR 49.00 *et seq.* through a formal or informal remedial action if a bank or lender ceases to meet applicable eligibility requirements of 209 CMR 49.04, based upon a report of examination conducted by the Commissioner or other applicable federal bank regulatory agency, or an investigation conducted by the Division or based on other reliable information.

49.05: Application Process to Conduct Insurance Sales Activities

- (1) General. A bank that is adequately capitalized, and has not been notified that it is in troubled condition or that it is significantly undercapitalized, or a lender that meets applicable statutory or regulatory net worth requirements, may engage in insurance sales activities under 209 CMR 49.00 *et seq.*, by submitting an application to, and receiving approval from, the Commissioner; provided, however, that such bank or lender also applies for and receives a license as an insurance producer from the Division pursuant to M.G. L. c. 175, § 209 and 211 CMR 142.00 *et seq.*, before commencing insurance sales activities.
- (2) Application. A bank or lender must include in its application a complete description of its proposed insurance sales activities, its investment in such activity, and any other information the Commissioner may require.
- (3) Plan of Operation. A bank or lender shall submit a plan of operation to the Commissioner as part of the application process under 209 CMR 49.05. The plan of operation shall contain:
 - (a) a detailed description of the applicant's consumer complaint resolution procedures, which shall include, but not be limited to, the names, addresses and telephone numbers of designated personnel responsible for its enforcement; a description of its procedures for forwarding copies of all consumer insurance sales complaints to the Office of Consumer Affairs pursuant to 209 CMR 49.06(10)(a); and a description of its procedures for the investigation and resolution of such complaints under 209 CMR 49.06(10)(c);

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

- (b) information demonstrating that the applicant meets the financial managerial, capital or net worth, policy and procedure, and other applicable eligibility requirements of 209 CMR 49.04;
- (c) information demonstrating that the applicant has established effective internal control procedures and safeguards to ensure compliance with the consumer protection terms and conditions prescribed by 209 CMR 49.06.
- (d) detailed information demonstrating that the applicant has established effective internal control procedures and safeguards against the unauthorized release, dissemination, or sharing of confidential customer information, including medical record information, protected by M.G.L. c. 175I, within the applicant's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties; and
- (e) a representation and undertaking that insurance sales activities will be conducted in accordance with 209 CMR 49.00 *et seq.*, and all other applicable state and federal law.

(4) Conditions. Any bank or lender granted an approval to conduct insurance sales activities pursuant to 209 CMR 49.05 is deemed to have agreed to conduct such activity in a manner consistent with applicable law, regulations and guidelines. The Commissioner may also impose additional conditions in connection with any approval granted under 209 CMR 49.05.

49.06: Consumer Protection Terms and Conditions Governing the Sale of Insurance

(1) Applicability.

- (a) General. The provisions of 209 CMR 49.06 shall govern the insurance sales activities of banks, federal banks and lenders. For purposes of 209 CMR 49.06, the term "bank" shall include a bank, federal bank and lender unless otherwise provided.
- (b) Waivers. A mortgagee which is not chartered as a bank, federal bank or licensed as a small loan company, mortgage lender or broker shall not be a bank for the purposes of the waiver provisions of 209 CMR 49.06(4)(b). Federal banks shall be governed by the waiver application provisions of 211 CMR 142.05(2)(b) instead of 209 CMR 49.06(4)(b)1. and 2.

(2) Plan of Operation.

- (a) Banks and Lenders. All insurance sales activities by banks or lenders shall be conducted in accordance with the plans of operation submitted to, and approved by, the Commissioner under 209 CMR 49.05(3).
- (b) Federal Banks. All insurance sales activities by federal banks shall be conducted in accordance with the plans of operation, which conform to 209 CMR 49.05(3), submitted to, and approved by, the Division under M.G.L. c. 175, § 209, and 211 CMR 142.00 *et seq.*

(3) Solicitations and Sales by Bank Personnel. The solicitation and sale of insurance by banks shall be conducted by licensed personnel of such institutions to the extent required by applicable insurance laws and regulations. Unlicensed officers, tellers and other employees, however, may refer customers to licensed personnel only where:

- (a) the customer initiates an inquiry as to the availability or acquisition of insurance products; and
- (b) such unlicensed personnel are not additionally compensated for such referrals.

(4) Insurance Sales on Bank Premises.

- (a) Locations. A bank may solicit and sell insurance products on bank premises, provided such activity is conducted in a distinctly designated area which is separate and apart from physical areas in which transactions involving insured deposits or extensions of credit are conducted.
- (b) Waivers.
 - 1. Grounds. The Commissioner, in his or her discretion, may waive the requirement under 209 CMR 49.06(4)(a) for the physical separation of bank and insurance services upon a demonstration by a bank or lender that space considerations, such as the size or design of said bank premises, preclude such separation. The burden is upon the applicant bank or lender to demonstrate that size, design, landmark status, National Register of Historic Places designation, site impediments, local zoning requirements, building codes, fire codes or other relevant considerations warrant the granting of a waiver.
 - 2. Waiver Conditions.

49.06: continued

- a. Common areas may be permitted for banking and credit transaction and insurance purposes if physical constraints warranting such condition are satisfactorily demonstrated by a bank's or lender's waiver application.
 - b. In any instance where such waiver is granted, a bank or lender employee, licensed as an insurance producer, shall not, in any manner involving the application by a customer for an extension of credit by said bank or lender, act as the representative of the bank or lender both with respect to said application and with respect to the solicitation and sale of insurance products to said customer, whether or not such insurance is required for the extension of credit.
 - c. It shall be the responsibility of a bank or lender to institute procedures to eliminate customer misunderstanding or confusion as to the distinction between such insurance products and other bank or lender functions, and to prevent any misrepresentation thereof if a waiver is granted.
 - d. The Commissioner, in his or her discretion, may impose such other conditions as may be deemed necessary to effectuate the purposes of M.G.L. c. 167F, § 2A(b)(3) and M.G.L. c. 171, §75B(b)(3).
 - e. The Commissioner, in his or her discretion, may subject a waiver application under 209 CMR 49.06(4)(b) to such notice and hearing as may be required.
3. Limitation on Waivers. Notwithstanding 209 CMR 49.06(4)(b), any bank premises constructed, purchased, leased or acquired by a bank on or after September 1, 1998, or on or after June 20, 2003 for a bank subject to M.G.L. c. 171, §75B, for the conduct of its authorized business, including the solicitation and sale of insurance, shall not be eligible for the waiver provided for herein, unless said acquisition results from a merger, consolidation or purchase of assets pursuant to applicable provisions of M.G.L. c. 168, M.G.L. c. 170, M.G.L. c. 171 and M.G.L. c. 172 or under comparable provisions of federal law in the case of a federal bank.
4. Applications. Applications for waivers shall be available for public inspection upon request unless the information is exempt from disclosure under M.G.L. c. 66, § 10 and M.G.L. c. 4, § 7, paragraph 26. Decisions approving or denying such applications shall be in writing and shall be available for public inspection upon request.
- (5) Anti-tying.
- (a) General. A bank is prohibited from tying the availability and extension of credit by a bank to the purchase of insurance products from said bank in violation of M.G.L. c. 176D § 4, or 12 USC §§ 1971 through 1978 and its implementing regulations promulgated by the Board of Governors of the Federal Reserve System.
 - (b) Solicitation Restrictions in Credit Transactions. No solicitation for the sale of insurance in conjunction with any application for the extension of credit shall be permitted until said application has been approved, such approval and the disclosures required by 209 CMR 49.06 have been provided to said applicant in writing, and the receipt of both said approval and disclosures has been acknowledged in writing by said applicant. The date, time and method of the communication of said approval and disclosures to the applicant, together with the applicant's acknowledgment of the receipt thereof, shall be made a permanent part of the bank record of such extension of credit.
 - (c) Solicitation Restrictions in Mortgage Loan Transactions. In the instance of an application to a bank for an extension of credit to be secured by a mortgage on real estate and in which it is necessary for the applicant to obtain a policy insuring said premises against loss and designating such bank as loss payee
 1. said bank shall make the initial disclosure of the necessity of such insurance in its letter of commitment to the applicant approving the requested extension of credit;
 2. such bank shall not, in any manner, solicit the applicant to purchase the required insurance from the bank until said commitment has been accepted by the applicant; and
 3. such bank shall not reject any such policy, so long as it satisfies the required insurance, because the policy was issued by a company other than that for which the bank acts as agent in the sale of insurance products.
 - (d) Mass Marketing Exception. 209 CMR 49.06(5) shall not apply in situations where a bank contacts a customer in the course of direct or mass marketing of insurance products to a group of persons in a manner that bears no relation to any such person's loan application or credit decision.
- (6) Rebates. Rebates shall be regulated pursuant to the provisions of M.G. L. c. 175, § 182 through 184.

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

(7) Mandatory Consumer Disclosures.

(a) Disclosure Contents. A bank, through its licensed insurance producers, shall disclose in writing to a potential insurance customer that:

1. the insurance products which are available are not deposits of the bank, are not protected by the federal deposit insurance corporation or any other type of deposit insurance, are not an obligation of or guaranteed by the bank, and may be subject to risk;
2. any insurance required as a condition of the extension of credit by the bank need not be purchased from the bank but may, without affecting the approval of the application for an extension of credit, be purchased from an agent or insurance company of the customer's choice; and
3. the customer may file any complaints with the Office of Consumer Affairs, as provided in 209 CMR 49.06(10).

(b) Exception. The disclosure required by 209 CMR 49.06(7)(a)1. shall not apply to a lender that does not accept deposits.

(c) Disclosure Form. The disclosures required by 209 CMR 49.06(7)(a) shall be provided in writing and receipt thereof shall be acknowledged in writing by the customer.

(8) Customer Information Security and Confidentiality.

(a) A bank, licensed as an insurance producer under M.G.L. c. 175, § 209 shall not permit the unauthorized release, dissemination, or sharing of confidential information, including medical record information, protected by M.G.L. c. 175I, within the bank's organization, including its affiliates, subsidiary corporations and third party vendors, as well as to third parties;

(b) a bank shall not permit the unauthorized release, dissemination, or sharing of confidential credit or other information, protected by the federal Fair Credit Reporting Act, 15 USC § 1681, and its implementing regulations, within the bank's organization, including its affiliates, subsidiary corporations and third party vendors engaged in insurance sales activities, as well as to third parties; and

(c) A bank shall at all times remain in compliance with M.G.L. c. 175I and the federal Fair Credit Reporting Act.

(9) Anti-Discrimination Requirements. No bank engaged in the direct sales of insurance products shall unlawfully discriminate against an insurance applicant or allow an affiliate, a subsidiary corporation established for the purpose or a third party acting on its behalf to unlawfully discriminate against an applicant for any insurance products offered by it based upon his or her membership in any class protected by M.G.L. c. 151B, § 4(3A)-(3B), including but not limited to, race, color, national origin or residence. No bank offering insurance products at its bank premises, shall refuse to offer the same at every such branch of the bank.

(10) Consumer Complaint Processing.

(a) A bank engaged in insurance sales activities, as an insurance producer, shall forthwith forward copies of all Massachusetts customer complaints relative to such activities to the Office of Consumer Affairs. Said Office shall cause a record of all such complaints received to be maintained and shall, depending upon the nature of the complaint, refer any such complaint for resolution to the Commissioner or the Division.

(b) The processing and resolution of consumer complaints under 209 CMR 49.06(10) shall be governed by the Interagency Agreement, and any amendments thereto.

(c) A bank shall take reasonable steps to investigate all consumer complaints and shall make a good faith effort to resolve such customer complaints in a timely manner.

(d) Nothing in 209 CMR 49.06(10)(a) shall prohibit a consumer from filing a separate individual complaint directly with the Office of Consumer Affairs, the Commissioner and/or the Division. Such complaints shall be processed pursuant to the Interagency Agreement.

(11) Unfair and Deceptive Acts or Practices. Any violation of 209 CMR 49.06 shall be deemed to be unfair methods of competition and unfair and deceptive acts or practices under M.G.L. c. 167, §§ 2A through 2G, inclusive and M.G.L. c. 93A.

49.07: Penalties and Sanctions

Any bank or lender that violates the provisions of 209 CMR 49.00 *et seq.*, shall be subject to sanctions under M.G.L. c. 167, including, but not limited to, M.G.L. c. 167 §§ 2A-2G, inclusive, M.G.L. c. 140, and

209 CMR: DIVISION OF BANKS AND LOAN AGENCIES

M.G.L. c. 255E. The preceding sanctions are independent from additional sanctions that may be imposed by the Division pursuant to M.G.L. c. 167F, § 2A(c), M.G.L. c. 171, §75B(c) and 211 CMR 142.00 *et seq.*

49.08: Severability

If any provision of 209 CMR 49.00, or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of 209 CMR 49.00 and the application of such provisions to other persons or circumstances shall not be affected thereby.

REGULATORY AUTHORITY

209 CMR 49.00: M.G.L. c. 167F, § 2A(e); M.G.L. c. 171, §75B(e); c. 30A, § 8.